

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

MITCHELL MARBURY,)
)
Plaintiff,)
)
v.) **4:04-CV-428-RDP-RRA**
)
)
SGT. EARL PICKETT; et. al.,)
)
Defendants.)

MEMORANDUM OF OPINION

The magistrate judge filed a report and recommendation on June 2, 2006, recommending that Defendants' motions for summary judgment (Docs. #68, 70) be denied. Objections have been filed.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, and the objections thereto, the court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and his recommendation is **ACCEPTED**. The court **EXPRESSLY FINDS** that, with respect to the claims that remain in this case, there are genuine issues of material fact and that Defendants are not entitled to judgment as a matter of law. Accordingly, Defendants' motions for summary judgment (Docs. #68, 70) are due to be denied. An appropriate order will be entered.

DONE and **ORDERED** this 29th day of June, 2006.



R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE